



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Date: JUN 15 2000

IN RE: Applicant:

APPLICATION:

IN BEHALF OF APPLICANT:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

June 15, 2000

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter will be remanded to her for further action.

The applicant is a native and citizen of Honduras who indicated on his application that he was present in the United States without a lawful admission or parole in January 1991. The director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish he had been in the United States as of December 30, 1998 and had been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant states that he submitted a copy of his automobile title dated 1997 and a rent receipt for December 1998 with the application. Those documents are not contained in the present record. The applicant states that he had just moved from Indiana to Ohio and did not have time to submit additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. 244, provide that an applicant who is a national of Honduras is eligible for temporary protected status only if such alien establishes that he or she:

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 5, 1999;
- c. Has continuously resided in the United States since December 30, 1998;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 5, 1999 and July 5, 2000.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by the Service. 8 C.F.R. 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. 244.9(b).

The record contains a copy of the applicant's medical record from Mercy Medical Center, Canton, Ohio, which reflects that he was treated in that emergency room on August 12, 1993, on October 13, 1994 and on April 24, 1995 for various reasons. He also submitted a letter from [REDACTED] in which she states that she met the applicant in Canton, Ohio, in May 1996 and a hand-generated rent receipt dated November 1998.

Based on the presence of the applicant's machine-generated medical record reflecting that he received treatment on three separate occasions from three different physicians, the Associate Commissioner deems that this document is sufficiently probative to cause a withdrawal of the director's decision and to remand the record for further review and to give the applicant an opportunity to submit a copy of his previously mentioned automobile title dated 1997 which is not contained in the present record. After reviewing the record and any additional documentation presented by the applicant, the director is to render a new decision based on the entire record which, if adverse to the applicant is to be certified to the Associate Commissioner for review.

ORDER: The director's decision is withdrawn and the matter is remanded to her for further action and the entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.